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IN THE

Supreme Court of the United States

October Term, 1965

No. —653

ANNA C. BRANDO, as Administratrix of the Estate of MARLON BRANDO, SR., Deceased, and MARLON BRANDO, JR.,

Petitioners,

vs.

IN THE MATTER OF BLACK RANCHES, INC., A Nebraska Corporation, Debtor, in Corporate Reorganization Proceedings under Chapter X of the Federal Bankruptcy Act.

ROE R. BLACK, AVIS C. BLACK, ROE C. BLACK, BLACK RANCHES, INC., A corporation, Debtor, and THOMAS HART FISHER,

Respondents.

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

ALLEN E. SUSMAN
444 United California Bank Bldg.
9601 Wilshire Blvd.
Beverly Hills, California 90210

WARREN K. URBOM
1200 Sharp Building
Lincoln, Nebraska 68508

Attorneys for Cross-petitioners

GANT PUBLISHING CO., Lincoln, Nebraska

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Cross-petitioners Anna C. Brando, as Administratrix of the Estate of Marlon Brando, Sr., Deceased, and Marlon Brando, Jr., pray that a writ of certiorari be granted to review and reverse the decision of the United States Court of Appeals for the Eighth Circuit and to remand the case

to the District Court of the United States for the District of Nebraska for further proceedings in that court, the writ to issue only in the event this court should grant the petition for a writ of certiorari in No. 544 of this term.

OPINIONS BELOW

The opinion of the District Court of the United States for the District of Nebraska is unreported. The opinion of the Circuit Court of Appeals, printed in the petition in No. 544, is reported in 362 F. 2d 19.

JURISDICTION

The court of appeals entered a judgment on May 12, 1966. Petitioners' petition for rehearing (with motions (1) That the language of the Court of Appeals' opinion be amended, and (2) that the Court of Appeals hear such petition and motions with such other judge or judges of some other United States Court of Appeals as might be designated by the United States Supreme Court) was denied without a supplemental opinion on June 21, 1966. Petitioners filed within ninety days thereafter in this Court a petition for writ of certiorari. This cross-petition is filed within thirty days after the filing of that petition.

This Court's jurisdiction is invoked under Section 1254 (1) of the United States Judicial Code (U. S. C. A., Tit. 28, Sec. 1254 (1)), which confers on this Court jurisdiction to review decisions of the United States Courts of Appeals.

The United States District Court's jurisdiction was based upon the provisions of the Federal Bankruptcy Act (U. S. C. A., Title 11, Chap. 2, Section 2).

QUESTIONS PRESENTED

1. Whether the trial court and the Court of Appeals,

in allowing cross-petitioner Marlon Brando, Jr.'s claim No. 22 after specifically upholding the validity of the two promissory notes and expressly finding no illegality, wrongdoing, overreaching, or dishonesty in the giving of the notes, could properly deny the validity of the two mortgages on the debtor's real estate which were given to cross-petitioner contemporaneously with the notes?

2. Whether the trial court and the Court of Appeals could properly deny cross-petitioner Marlon Brando, Jr.'s claims Nos. 19 and 20, based upon contracts between cross-petitioner and Roe R. Black, where the evidence demanded the finding of those debts were also the debts of the debtor corporation?

3. Whether the trial court and the Court of Appeals could properly (1) allow Roe R. Black's claim No. 12 and Thomas Hart Fisher's claim No. 13 and (2) not subordinate those claims to the other unsecured claims, where the evidence conclusively established that Black manipulated and commingled the corporate assets with those of his other operations, used the assets of the debtor corporation for his own personal benefit and profit, and did not account for those assets in the proceedings?

STATEMENT OF THE CASE

On October 22, 1954, in the District Court of the United States for the District of Nebraska five creditors instituted proceedings against The Black Ranches, Inc., a Nebraska corporation, pursuant to the corporate reorganization provisions of Chapter X of the Federal Bankruptcy Act. Petitioners, in No. 544 of this Court's October, 1965, term, filed a petition for a writ of certiorari for the review of a question which in our view does not warrant a granting of the writ. However, if the Court grants the petition in

No. 544, we believe that it should review the entire case and correct the obvious errors in the court below with respect to the questions enunciated herein. Accordingly, we are filing this conditional cross-petition.

The issues raised in this cross-petition arose as a result of an involved series of transactions connected with the operation and manipulation by Roe R. Black of the debtor corporation and its assets. Concerning the first aforementioned question, the lower courts held that Marlon Brando, Jr.'s claim No. 22, based upon two promissory notes, was not a secured claim. The trial court, upholding the validity of the two promissory notes, specifically found:

> "There was no illegality, wrongdoing; overreaching, or dishonesty of giving promissory notes evidencing the debts, and providing a later time for the payment of each note, and for the payment of lawful interests pending such payment." (Petition, App. 8)

Despite this express finding, the trial court failed to uphold the validity of the two mortgages on the debtor's real estate which were given to claimant contemporaneously with the notes as security for the debts.

The court's rationale was based upon the fact that at the time the first mortgage was given the mortgagee, Brando's father, was an officer and director of the debtor corporation, and when the second mortgage was given, the senior Brando was managing the corporation's Nebraska ranch. By virtue of these facts, the court concluded that the giving of the mortgages was a breach of the fiduciary duty on the part of Marlon Brando, Sr., who was an attorney in fact for Marlon Brando, Jr. However, Jean A. Cobbey was also an officer and director of the corporation and owned as trustee all the debtor's corporate stock.

Concerning the sceond aforementioned question, Marlon Brando Jr.'s claim Nos. 19 and 20, based upon contracts between Marlon Brando, Jr. and Roe R. Black, were denied. The basis of the court's refusal to allow these claims was the finding that the contracts were not an obligation of the corporation. The totality of the mass of evidence, however, display that Roe R. Black's method of operation involving the corporation's real estate and other assets, and his involved manipulation in connection with his cattle operations, amounted to a scheme devised to defraud his cattle customers and others of vast sums of money, and that these facts bring him and his corporation, which he controlled at all times, within the rule that his debts and obligations are the debts and obligations of the corporation.

Concerning the third aforementioned question, claim Nos. 12 and 13 were allowed in the total amount of $78,-641.75, one-half to Thomas Hart Fisher by virtue of an assignment from Roe R. Black. The trial court found that Roe R. Black had sold some equipment to the debtor corporation despite the evidence that Black used the assets of the corporation for his own personal benefit and profit. Such assets were not accounted for in the proceedings. In addition, due to the gross undercapitalization of the corporation, the sums of money provided by Black should have been regarded as capital supplied to the corporation.

The trial court, recognizing the infirmity of Black's claim, stated:

> "It will be observed that in its response to the third and final phase of the objector's position, the court has found only that objector's position there taken 'is not proved.' It hesitates categorically to declare that that position is objectively and certainly untrue." (Trial Ct's. Op. 176)

ARGUMENT

In denying Marlon Brando Jr.'s claim No. 22 as a secured claim, the lower courts contravened established Nebraska law which upholds the validity of mortgages to corporate officers and directors. The lower court, for all practical purposes, held that under no circumstances could a corporation secure a corporate officer for money advanced for the use of the corporation, even in the absence of illegality, wrongdoing, overreaching, or dishonesty. *Boevink v. D. Christianse,* 69 Neb. 256, 95 N. W. 652; *Goerder v. Plattsmouth Canning Co.,* 36 Neb. 548, 54 N. W. 830; *Gordon v. Stewart,* 4 Neb. Unof. 852, 96 N. W. 624. See also *Twinlick Oil Co. v. Marbury,* 91 U. S. 589.

In respect to the second and third aforementioned questions, this Court should enunciate guidelines in respect to (1) the validity and the status in equity of claims made by an owner of a one-man corporation; and (2) contracts involving the debtor corporation made by an owner of a one-man corporation with third parties. As stated by this Court, fraud is often and easily practiced upon the public by one-man corporations:

> "In all the experience of the law, there has never been a more prolific breeder of fraud than the one-man corporation. It is a favorite device for the escape of personal liability. This case illustrates another frequent use of this fiction of corporate entity, whereby the owner of the corporation, through his complete control over it, undertakes to gather to himself all of its assets to the exclusion of its creditors." *Pepper v. Litton,* 308 U. S. 295, 84 L. Ed. 281, 60 S. Ct. 238, 248 f.n. 28.

Clearly, the questions presented are of importance in the administration of the Federal Bankruptcy laws and in the

public interest as pertain to the prevention of fraud by one-man corporations. The lower courts, sitting in equity in bankruptcy matters, should be given guidelines respecting the above-mentioned matters.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that in the event that the court should grant the petition for a writ of certiorari in No. 544, this petition for a writ of certiorari should likewise be granted.

Respectfully submitted,

ALLEN E. SUSMAN,
444 United California Bank Bldg.
9601 Wilshire Blvd.
Beverly Hills, California 90210

WARREN K. UBBOM,
1200 Sharp Building
Lincoln, Nebraska 68508

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